
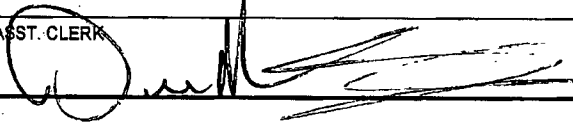


JUDGMENT BY DEFAULT UPON ASSESSMENT OF DAMAGES #64 Mass. R. Civ. P. 55(b)(2)		Trial Court of Massachusetts The Superior Court 
DOCKET NUMBER 2173CV00339	Jennifer A. Sullivan, Clerk of Court Bristol County	
CASE NAME Megan M Bruce vs. Michael J Ristuccia et al	COURT NAME & ADDRESS: Bristol County Superior Court - New Bedford 441 County Street, 1st floor New Bedford, MA 02740	
JUDGMENT FOR THE FOLLOWING PLAINTIFF(S) Megan M Bruce	BRISTOL, SS SUPERIOR COURT FILED JUN 28 2023 JENNIFER A. SULLIVAN, ESQ. CLERK / MAGISTRATE	
JUDGMENT AGAINST THE FOLLOWING DEFENDANT(S) Michael P Ristuccia		
<p>This action came on to be heard before the Court, Hon. Thomas F McGuire, Jr., presiding, upon the marking of the motion of above named Plaintiff(s), in the above entitled action, for a default Judgment by the Court, pursuant to Mass.R.Civ. P. 55(b)2 and it appearing to the court that the complaint in said action was filed on 05/03/2021 and that the summons and complaint were duly served on the Defendant(s), and that no answer or other defense has been filed by the said defendant, and that default was entered in the office of the clerk of this court, and that no proceedings have been taken by said Defendant since said default was entered.</p> <p>After Judicial Finding, it is ORDERED AND ADJUDGED:</p> <p>The plaintiff(s) named above recover of the defendant(s) named above, the "Judgment Total" with interest thereon as outlined below as provided by law, and the statutory costs of action.</p>		
1. Date of Breach, Demand or Complaint		05/03/2021
2. Date Judgment Entered		06/28/2023
3. Number of Days of Prejudgment Interest (line 2 - Line 1)		786
4. Annual Interest Rate of 0.12/365.25 = Daily Interest rate		.000329
5. Single Damages		\$120,000.00
6. Prejudgment Interest (lines 3x4x5)		\$31,031.28
7. Double or Treble Damages Awarded by Court (where authorized by law)		\$240,000.00
8. Statutory Costs		\$1,841.20
9. Attorney Fees Awarded by Court (where authorized by law)		\$31,597.50
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)		\$424,469.98
DATE JUDGMENT ENTERED 06/28/2023	CLERK OF COURTS/ ASST. CLERK X	

#63

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

BRISTOL, ss.

Civil Action No. 2173CV00339

MEGAN M. BRUCE,
Plaintiff

BRISTOL,SS SUPERIOR COURT
FILED

v.

MICHAEL P. RISTUCCIA.
Defendant

JUN 27 2023

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

And

8 ACADEMY 2022, LLC.
Reach and Apply Defendant

**ORDER FOR JUDGMENT ON COUNT VII OF
PLAINTIFF'S THIRD AMENDED COMPLAINT**

The plaintiff, Megan M. Bruce, brought this action alleging breach of contract and other claims against the defendant, Michael P. Ristuccia, arising out of his agreement to add an addition to her home. On March 22, 2022, the parties entered an agreement for judgment on the first five counts. The agreement provided judgment would enter on those counts for the plaintiff in the amount of \$ 120,000. If the defendant paid the judgment by a certain date, the remaining count, Count VII alleging violation of G.L. c. 93A, would be dismissed. If the defendant did not pay by the agreed date, the plaintiff would proceed on the claim under G.L. c. 93A.¹

On August 18, 2022, the court (Yesayan, J.) ordered the claim under G.L. c. 93A restored to the trial list. On December 22, 2022, the court (Cloutier, J.) ordered the defendant defaulted on the G.L. c. 93A claim as a sanction for failure to provide discovery as previously ordered.

¹ On February 16, 2023, the plaintiff dismissed the other two remaining counts of her third amended complaint.

On January 25, 2023, the court (Cowin, J.) held a hearing on the assessment of damages on the plaintiff's claim under G.L. c. 93A. The court continued the hearing to April 11, 2023. The court further ordered the defendant to produce certain discovery and submit to a deposition by certain dates in February, 2023. The court ordered that the defendant would be precluded from testifying or offering other evidence at the assessment of damages hearing if he failed to comply with the discovery order. (Paper No. 58.)

FACTS

On April 11, 2023, the court conducted a hearing for the assessment of damages on the G.L. c. 93A claim. The court received numerous affidavits submitted by the plaintiff. The defendant also testified.²

As a result of its default,³ the defendant has admitted the following allegations set out in the complaint:

- The defendant deceived the plaintiff into believing that he was a licensed home improvement contractor who possessed the knowledge and skill to perform the work for which he was hired i.e., construction of an addition to the plaintiff's home, in violation of 940 CMR 3.16 (2).
- The defendant misrepresented the time required to complete the project.
- The defendant failed to tender a written contract in violation of G.L. c. 142A.
- The defendant forged the plaintiff's signature on an application for a building permit.

² The parties reported at the hearing that the defendant had submitted to a deposition. The defendant did not move for reconsideration of the entry of default on the c. 93A claim.

³ While these allegations of fact are deemed admitted due to the defendant's default, *Plasko v. Orser*, 373 Mass. 40, 43-44 (1977), they are also well-established by the credible evidence.

- The defendant failed to obtain necessary building permits and to request necessary inspections by the building inspector for the town of Fairhaven.
- The defendant constructed the addition using substandard framing and with other structural defects and concealed those defects from the plaintiff.
- The defendant misrepresented to the plaintiff that he paid subcontractors.
- The defendant misappropriated payments given to him by the plaintiff for the purpose of paying expenses related to the plaintiff's project.
- The defendant failed to comply with statutes, rules, and regulations, including the State Building Code, intended to protect the public's health, safety, or welfare, in violation of 940 CMR 3.16 (3).
- The defendant received a proper demand letter from the plaintiff pursuant to G.L. c. 93A, § 9.

These allegations constitute unfair and deceptive acts in violation of G.L. c. 93A §§ 2 and 9, entitling the plaintiff to actual damages and attorney's fees. However, the default does not resolve the issue of whether a defendant's acts were willful or knowing violations of the statute, which would entitle the plaintiff to multiple damages. That issue "is treated as a question relating to damages and, therefore, is not precluded by a default." *Marshall v. Stratus Pharmaceuticals, Inc.*, 51 Mass. App. Ct. 667, 676-677 (2001).

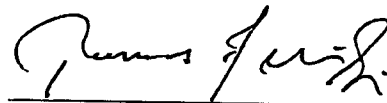
The court finds the affidavits submitted by the plaintiff to be credible. For the reasons set out in detail in those affidavits and the plaintiff's memorandum of law, the court finds that the defendant's violations of G.L. c. 93A were willful and knowing.

Actual damages amount to \$ 120,000.00, as the parties agreed. Due to the egregious nature of the violations, the court awards treble damages, together with reasonable attorney's

fees in the amount of \$ 31,597.50, and costs of \$ 1,841.20, as set out in the affidavit of Attorney Richard M. Bennett. The court specifically finds Attorney Bennett's hourly rate of \$ 250.00 to \$ 300.00 to be reasonable. The court also finds that the number of hours worked were reasonable and necessary considering the nature of the litigation.

The court therefore **ORDERS** that judgment enter on Count VII of the complaint in favor of the plaintiff, Megan M. Bruce, and against the defendant, Michael P. Ristuccia, in the amount of \$ 120,000.00 in actual damages, trebled under G.L. c. 93A to \$ 360,000.00, together with interest at the rate of 12 % per annum on actual damages of \$ 120,000, attorney's fees in the amount of \$ 31,597.50, and costs of \$ 1,841.20.

June 25, 2023



Thomas F. McGuire, Jr.
Justice of the Superior Court